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AUGUST B. LANDIS

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re) Case No. 10-47936
11) Chapter 11
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Debtor.

13 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
14 **MOTION BY ACTING UNITED STATES TRUSTEE**
15 **TO CONVERT OR DISMISS CASE**

16 The Acting United States Trustee for Region 17, ("U.S. Trustee") hereby provides this
17 memorandum of points and authorities in support of his motion for the entry of an Order,
18 pursuant to 11 U.S.C. § 1112 converting the above-captioned Chapter 11 case to a Chapter 7
19 case, or, in the alternative, dismissing the case.

20 1. On July 14, 2010, Julia Pedruco, ("Debtor"), commenced this case by filing a
21 voluntary petition under Chapter 13 in the United States Bankruptcy Court for the Northern
22 District of California, Oakland Division. On September 14, 2010, a motion to dismiss the case
23 was filed by the chapter 13 trustee. On September 20, 2010 an order dismissing Debtor's
24 chapter 13 case was entered. On October 5, 2010 the Debtor filed a motion to vacate the order of
25 dismissal. On October 12, 2010, an order vacating the order of dismissal was entered. On
26 January 10, 2011, the Debtor filed a motion to convert her case to a case under chapter 11. On
27 January 28, 2011 the case was converted to a chapter 11 case. On February 28, 2011 the meeting
28 of creditors was held and concluded. Thereafter, Debtor failed to provide information

1 reasonably requested by the United States Trustee pursuant to 11 U.S.C. § 1112(b)(4)(H), failed
2 to disclose assets, and does not have the means necessary to file a feasible plan. Accordingly,
3 this case should be converted or dismissed pursuant to Section 1112.

4 **Failure to Provide Information Reasonably Requested**

5 2. Pursuant to 11 U.S.C. § 1112(b)(4)(H), cause includes a failure to timely provide
6 information reasonably requested by the United States Trustee.

7 3. 11 U.S.C. § 704(8) made applicable in Chapter 11 cases by 11 U.S.C. § 1107(a)
8 requires the debtor to provide information as the United States Trustee requires.

9 4. The debtor has failed to provide the Office of the United States Trustee with
10 information requested on February 3, 2011, regarding proof of opening a Debtor in Possession
11 account, proof of insurance and 2009 tax returns.

12 **Failure to Disclose Assets**

13 5. On Debtor's schedule A, she listed no real property. On Schedule B she listed
14 personal property in the amount of \$4,945.

15 6. On July 14, 2011, the Debtor's original Schedule D reflected two secured claims,
16 the first held by Wachovia Mortgage in the amount of \$447,069 and the second held by State
17 Farm in the amount of \$33,933.

18 7. On January 10, 2011, the Debtor amended her Schedule F to include the Wachovia
19 claim on \$447,069 and the State Farm claim of \$ 33,933 as unsecured debts.

20 8. The Debtor has failed to disclose any of her assets on Schedule A and instead listed a
21 secured debt on Schedule F in an attempt to place the burden on the secured creditor to prove
22 that they have a valid mortgage.

23 **Does Not Have the Means Necessary to File a Feasible Plan**

24 9. On February 25, 2011, the Debtor filed a Chapter 11 statement of Current Monthly
25 Income which reflects a monthly income of \$500.00

26 10. Based upon the disclosed income, the U.S. Trustee has concluded that there are
27 insufficient funds in the estate to fund a feasible plan.

28 11. Debtor's failure to comply with the requirements of the Bankruptcy Code, the

1 Bankruptcy Rules and the United States Trustee Guidelines indicate that the Debtor is unable to
2 manage her affairs as required of a debtor in possession and constitutes "cause" for conversion or
3 dismissal under 11 U.S.C. § 1112 of the Bankruptcy Code.

4 In conclusion, based upon the foregoing, the U.S. Trustee submits that the Court should
5 enter an Order converting this case to Chapter 7 case, or, in the alternative, dismissing this case.

6 Date: March 15, 2011

Respectfully submitted,

Barbara Matthews
Assistant United States Trustee

By: Margaret H. McGee
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Trial Attorney